IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 15771 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

UNITED CORRUGATED PVT LTD

Versus

DISTRICT INDUSTRIES CENTRE

Appearance:

1. Special Civil Application No. 15771 of 2003

MR TANVISH U BHATT for Petitioner No. 1

MR SIRAJ GORI, AGP for Respondent No. 1-5

CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

Date of decision: 09/03/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

Leave to amend.

Rule. Mr Siraj Gori, learned AGP is directed to waive service of Rule and he accordingly waives service of Rule on behalf of the respondents.

In the facts and circumstances of the case, the petition is taken up for final disposal today.

2. In this petition under Article 226 of the Constitution, the petitioner has challenged the order dated 14.11.2000 (Annexure "E") issued by respondent No.1-District Industries Centre, Navsari amending the eligibility certificate for sales-tax incentives and the consequential order dated 1.12.2003 passed by respondent No.5-Assistant Sales-tax Commissioner, Valsad which is at Annexure "E-1" to the petition.

3. The facts leading to filing of this petition, briefly stated, are as under :-

3.1 The petitioner is carrying on the business of manufacturing and supplying corrugated sheets and boxes. The petitioner is a registered Unit with the Sales-tax Department. By resolution dated 11.9.1995, the Government of Gujarat in its Industries and Mines Department issued a new incentive policy called "Capital Investment Incentive Scheme - 1995-2000". The scheme, inter alia, provided for sales-tax exemption or deferment on the goods purchased or sold by the units established in the specified backward areas. The amount of exemption/deferment was fixed as per the fixed eligible capital investment defined under the scheme. Initially, the District Industries Centre, Navsari granted ad-hoc eligibility certificate to the petitioner to the tune of Rs.5,26,023/- for the period from 15.6.1996 to 14.6.2001. After inquiry, the final eligibility certificate (Annexure "C") for the sales-tax incentives was issued to the petitioner for an amount of Rs.21,04,094/- which was obviously inclusive of the amount of Rs.5,26,023/= granted on ad-hoc basis. On the basis of the eligibility certificate issued by the District Industries Centre, the Assistant Sales-tax Commissioner, Valsad granted sales-tax exemption to the tune of Rs.21,04,094/- by sales-tax exemption certificate dated 27.7.1998 (Annexure "D"). It is the petitioner's case that on the basis of the aforesaid certificates issued by the concerned authorities, the petitioner did not collect the purchase/sales tax as provided in the said scheme. It is also the petitioner's case that on the basis of the above certificates, the petitioner utilized the said exemption by April 2000 and started payment of taxes as per the scheme.

3.2 On 14.11.2000, the District Industries Centre, Navsari amended the final eligibility certificate of the petitioner and reduced the amount from Rs.21,04,094/- to Rs.16,81,918/- by amendment certificate at Annexure "E". According to the petitioner, since the petitioner had already utilized the exemption limit granted as per the previous eligibility certificate dated 4.6.1998 (Annexure "C") issued by the District Industries Centre read with the certificate dated 27.7.1998 (Annexure "D") issued by the Sales-tax Commissioner and the petitioner had also started paying taxes after exhausting the exemption limit granted as per the previous certificates and since no action was initiated by the sales-tax authorities on the basis of the amendment made by the District Industries Centre on 14.11.2000, the petitioner did not institute any proceedings for challenging the said amendment certificate dated 14.11.2000 of the District Industries Centre. However, on 8th & 9th September, 2003, the officers of the Sales-tax Department carried out search at the petitioner's premises and on the basis that the petitioner had overenjoyed the sales-tax exemption in excess of Rs.16,81,918/- (i.e. the difference between Rs.21,04,094/- and Rs.16,81,918/-), the officers collected post-dated cheques for the aforesaid differential amount of Rs.6,37,840/-.

3.3 The petitioner has thereafter filed the present petition on 15.10.2003 challenging the aforesaid action of the Sales-tax Department and also the amendment certificate dated 14.11.2000 issued by the District Industries Centre, Navsari reducing the amount from Rs.21,04,094/- to Rs.16,81,918/-. After filing of the petition and after this Court issued notice to the respondents, the Assistant Sales-tax Commissioner, Valsad issued the order dated 1.12.2003 reducing the exemption amount from Rs.21,04,094/- to Rs.16,81,918/- on the basis of the amendment certificate dated 14.11.2000 of the District Industries Centre, Navsari. The petitioner has, therefore, challenged the said order dated 1.12.2003 (Annexure "E-1") by obtaining leave to amend the petition.

4. Mr Tanvish U Bhatt, learned counsel for the petitioner has submitted that the District Industries Centre, Navsari issued the amendment certificate dated 14.11.2000 reducing the eligibility amount from Rs.21,04,094/- to Rs.16,81,918/- without issuing any notice to the petitioner or without giving any opportunity of hearing to the petitioner and, therefore, the said amendment certificate is null and void and could

not have been acted upon by the sales-tax authorities.

The learned counsel has further submitted that in any view of the matter, the petitioner had expanded its existing project and made further investments therein and, therefore, under the same scheme for sales-tax incentives, the District Industries Centre, Navsari, after due verification of the expansion, granted another eligibility certificate dated 16.3.2003 (Annexure "F") for sales-tax incentives to the tune of Rs.15,65,600/-. It is, therefore, submitted that if the said certificate already sent by the District Industries Centre, Navsari to the sales-tax authorities was taken into consideration, the sales-tax authorities would have had no occasion to take any coercive action against the petitioner.

5. On the other hand, Mr Siraj Gori, learned AGP for all the respondent authorities, including the District Industries Centre, Navsari and the sales-tax authorities, has submitted that the petition filed in October, 2003 suffers from delay, latches and acquiescence as the petitioner did not challenge the amendment certificate dated 14.11.2000 for almost three years and, therefore, the petitioner cannot ask for any relief either against the District Industries Centre or against the sales-tax authorities which have merely acted on the basis of the amendment certificate dated 14.11.2000 of the District Industries Centre.

The learned AGP has relied upon the averments made in the reply affidavit to justify the action of the District Industries Centre reducing the eligibility amount from Rs.21,04,094/- to Rs.16,81,918/-.

The learned AGP has further submitted that the District Industries Centre has examined all the relevant factual aspects for determining the correct amount of eligibility for sales-tax incentives and, therefore also, no interference is called for in this petition under Article 226 of the Constitution.

6. Having heard the learned counsel for the parties, we are not inclined to go into the merits of the controversy between the parties about the amount of exemption which the petitioner is entitled to under the Capital Investment Incentive Scheme - 1995-2000 for the simple reason that the amendment certificate dated 14.11.2000 was issued by the District Industries Centre without giving the petitioner any notice or opportunity of being heard. The sales-tax authorities have stated in

no uncertain terms and the impugned order dated 1.12.2003 (Annexure "E-1") also states that they have taken the action on the basis of the amendment certificate dated 14.11.2002 (Annexure "E") issued by the District Industries reducing the eligibility amount. The said order dated 14.11.2000, therefore, has inflicted adverse civil consequence on the petitioner and such an order could not have been passed without giving the petitioner a show cause notice and an opportunity of being heard.

7. As regards the objection raised by the learned AGP about the delay in filing the petition, the learned counsel for the petitioner has submitted that since the petitioner had already exhausted the exemption limit long before 14.11.2000 and the Sales-tax Department also did not issue any adverse order nor did they take any adverse action till September, 2003, the petitioner had no occasion to challenge the amendment certificate dated 14.11.2000. The learned counsel has further submitted that in view of the subsequent eligibility certificate dated 16.3.2002 issued by the District Industries Centre for Rs.15,65,600/- also, the petitioner was of the bona fide belief that no adverse action was likely to be taken against the petitioner on the basis of the earlier amendment certificate dated 14.11.2000.

It appears to us that the explanation offered by the petitioner does indicate sufficient cause for the delay in filing this petition. In our view, therefore, the impugned amendment certificate dated 14.11.2000 (Annexure "E") is required to be quashed and set aside only on the ground that the same was issued without giving the petitioner any notice and opportunity of being heard.

8. At this stage, Mr Bhatt for the petitioner also submits that although the District Industries Centre had already issued the eligibility certificate dated 16.3.2002 for an amount of Rs.15,65,600/-, the sales-tax authorities are not issuing any exemption certificate on that basis only on account of the the dispute with regard to reduction in the exemption limit from Rs.21,04,094/= to Rs.16,81,918/- as per the exemption orders dated 14.11.2000 (Annexure "E") and 1.12.2003 (Annexure "E-1").

Apropos the above grievance, Mr Gori, learned AGP submits that if, after the fresh inquiry, the District Industries Centre again takes the view that the reduction in the exemption limit was justified, the petitioner cannot be allowed to take the benefit of the original exemption limit of Rs.21,04,094/- and, therefore, the

sales-tax authorities are justified in not acting upon the eligibility certificate dated 16.3.2002 in relation to the expansion of the petitioner's project.

9. Having heard the learned counsel for the parties on the above issue, we are of the view that while the sales-tax authorities may be justified in not issuing any exemption certificate to the petitioner on the basis of the District Industries Centre's certificate dated 16.3.2002 for the entire amount of Rs.15,65,600/-, the controversy is only with regard to the differential amount of Rs.4,22,176/- (Rs.21,04,094 less Rs.16,81,918). Hence, on account of the dispute about this amount, the respondent authorities need not hold back the exemption certificate for the balance amount of Rs.1,43,424/= (Rs.15,65,600 less Rs.4,22,176/-).

10. Mr Tanvish Bhatt for the petitioner has submitted that the respondent authorities have collected post-dated cheques which are required to be returned to the petitioner because such action was without any authority of law. The learned AGP has sought to justify the said action.

However, we do not propose to go into that controversy as the impugned certificates, on basis of which the action of collecting post-dated cheques was taken, have been quashed and set aside and otherwise also the petitioner has pointed out that the District Industries Centre has issued another eligibility certificate for the expansion in the project and, therefore, the petitioner will be in a position to request the authorities for increasing the exemption limit for the sales-tax incentives.

11. Accordingly, the petition is allowed in the following terms :-

(A) The impugned order dated 14.11.2000 (Annexure "E") issued by the District Industries Centre, Navsari and the consequential order dated 1.12.2003 (Annexure "E-1") issued by the Sales-tax Department are quashed and set aside, without prejudice to the power of the said authorities, particularly the District Industries Centre, Navsari, to issue a show cause notice to the petitioner calling upon the petitioner to show cause why the eligibility amount should not be reduced from Rs.21,04,094/- to Rs.16,81,918/and the grounds for such tentative view and the District Industries Centre, Navsari

will be at liberty to take appropriate decision in accordance with law after giving the petitioner an opportunity to produce the necessary material in support of its case and also to submit its reply. The petitioner shall also be given an opportunity of personal hearing to clarify any doubts.

(B) After the District Industries Centre takes appropriate decision, the sale-tax authorities shall take appropriate decision in accordance with law for deciding the exemption amount. In case the sales-tax authorities propose to determine the exemption amount different from the eligibility amount to be determined by the District Industries Centre hereafter, the sales-tax authorities shall give the petitioner an opportunity of hearing.

(C) Since the impugned order dated 14.11.2000 (Annexure "E") issued by the District Industries Centre, Navsari and the consequential order dated 1.12.2003 (Annexure "E-1") issued by the Sales-tax Department are quashed and set aside, the respondent authorities shall return the post-dated cheques collected from the petitioner on 8th/9th September, 2003 within one week from the date of service of this order.

(D) Since the District Industries Centre has already issued the eligibility certificate in favour of the petitioner on 16.3.2002 for an amount of Rs.15,65,600/-, the sales-tax authorities shall for the present consider the petitioner's request for grant of exemption certificate for sales-tax incentives for the differential amount of Rs.11,43,424/- (Rs.15,65,600/- less Rs.4,22,176/-) in respect of the expansion of the project. This shall be done within one month from the date of service of this order.

12. Rule is made absolute to the aforesaid extent with no order as to costs.

Direct Service is permitted.

(M.S. Shah, J.)

(A.M. Kapadia, J.)

sundar/-